

# HUESTON HENNIGAN LLP

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March 18, 2019

**VIA ECF**

Hon. Alison J. Nathan  
United States District Judge  
Southern District of New York  
Thurgood Marshall United States Courthouse  
40 Foley Square  
New York, New York 10007

**Re: SEC v. Elon Musk, No. 1:18-cv-8865-AJN-GWG**

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Dear Judge Nathan:

We represent Elon Musk in the above-captioned action. Pursuant to Local Rule 3B, I write on behalf of Mr. Musk to respectfully request the Court's permission to file a sur-reply memorandum of no more than 10 pages by March 22, 2019, in order to respond to new factual assertions and legal arguments raised in the SEC's Reply Memorandum to Defendant Elon Musk's Response to Order to Show Cause (the "Reply"). The Reply included, for example, 61 pages in new exhibits and new allegations regarding the Tesla Senior Executives Communications Policy (*see* Reply at 10 & Ex. 12). *CE Int'l Res. Holdings LLC v. S.A. Minerals Ltd. P'ship*, 2012 WL 6178236, at \*2 (S.D.N.Y. Dec. 10, 2012) ("It is improper in this district and this circuit to introduce new arguments in reply."); *Travelers Indem. Co. v. Excalibur Reinsurance Corp.*, 2013 WL 4012795, at \*2 (D. Conn. Aug. 5, 2013) ("[A] party may not attempt to cure deficiencies in its moving papers by including new evidence in its reply to opposition papers[.]"). Among other things, Mr. Musk would like to address the SEC's unsupported assertions and submit documentation reflecting the negotiation history between the SEC and Mr. Musk and Tesla, which undermines the newly-presented interpretation the SEC sets forth in its Reply.

Respectfully submitted,

*s/ John C. Hueston*

John C. Hueston

Cc: Counsel of Record